



Information for Nearest Relatives

First-tier Tribunal – Health, Education and Social Care Chamber (Mental Health)

Who is the Nearest Relative?

'Nearest Relative' is a legal term and means the patient's family member who has certain rights and powers under the Mental Health Act. It is important to remember that the Nearest Relative and the patient's 'next of kin' may be two quite different people. The Mental Health Act provides a list of people who may be eligible to be the Nearest Relative and the Approved Mental Health Professional (AMHP) involved in your relative's detention will look at their personal circumstances and identify who this should be.

What is the role of the Nearest Relative?

As the Nearest Relative you may play an important part in the scheme of the Act, which gives you the right to make certain applications in respect of the patient's admission to hospital. You may also receive other information about the patient's detention (if they do not object).

You also have the right to apply to the tribunal for your relative's discharge.

If the patient applies to the tribunal or the case is referred for review, and provided that the patient agrees, you will be told the hearing date and invited to attend and take part at the tribunal panel's discretion.

If you do not want to attend the hearing, your views about your relative's detention should in any event be included in the Social Circumstances report that must be prepared for the tribunal.

If you start the tribunal proceedings by making an application to the tribunal you may (subject to funding) appoint a registered medical practitioner to visit and examine the patient, attend the hearing, be heard by the tribunal, and call witnesses and cross-examine, with the help of a legal representative if you want one. You will also receive copies of documents received by the tribunal about the case.

What is a tribunal?

An independent judicial body that reviews the need for the continued detention of patients in hospital. The tribunal may also review Guardianship and Community Treatment Orders.

Tribunal hearings aim to be as flexible as particular circumstances may allow within a legal framework, in order to be fair to the patient and to have access to all relevant information.

Who is on the tribunal?

The tribunal will consist of three members, the tribunal judge who chairs the hearing, and two tribunal members of whom one is a psychiatrist and the other of whom will have non-medical specialist mental health expertise.

None of these people will be from or connected with the hospital where your relative is detained or the Authority managing the hospital or from the community services involved in any Guardianship or Community Treatment Order.

What do they do?

They consider if the patient's detention under 'Section' (or the Guardianship or Community Treatment Order) need to continue, or if it ought to be discharged.

If they do not discharge, for detained patients they can make recommendations to the hospital to assist an early future discharge.

What happens at the hearing?

The hearing is usually held in private. The tribunal holds hearing in nearly all cases. The exception to this relates to some patients on a Community Treatment Order, where patients aged over 18, can decide not to attend or be represented at the hearing. If your relative is referred for a Community Treatment Order hearing you might like to assist them when considering which option they'd prefer, but it must be their decision. If the patient decides not to attend, the tribunal will look at all the papers including your views that have been submitted as part of the Social Circumstances Report.

At the beginning of the hearing the tribunal judge will explain how the tribunal intends to hear the case. Usually present at the hearing will be the patient, the clinician responsible for his or her care, an a professional concerned with community support and care, a nurse if the patient is being treated in hospital, and any legal representative.

It is unusual for a Nearest Relative to be represented except in circumstances where they made the original application to the tribunal, and assistance with funding for representation is likely to be difficult to obtain. You may ask to bring someone to the hearing to support you.

What happens after the Tribunal hearing?

If you made the original application you will receive a copy of the Tribunal's decision. In certain circumstances you may have the right to seek to appeal against the decision made by the tribunal. These rights will be explained in writing and forwarded to you with the tribunal's decision.

If you did not make the application but you attend the hearing, you will probably hear the Panel's decision announced on the day. If you are invited to attend but are unable or decide not to attend, you will be informed by the hospital of the outcome.

How do I claim my expenses?

If you attend the Tribunal hearing as an applicant or a witness you may request financial assistance from the tribunal with respect to the following:

- Travelling expenses;
- Loss of earnings up to certain limits, where applicable;

Claim forms can be obtained either from the MHT website – www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/mental-health/index.htm or from the finance officer at the tribunals office. The contact details are:

HM Courts & Tribunals Service
First-tier Tribunal (Mental Health)
The Finance Officer
P.O. Box 8793
5th Floor
Leicester LE1 8BN

Further information

If you require more information about how the Nearest Relative is appointed, your role and rights as the Nearest Relative:

- You may wish to take independent legal advice from your own solicitor. If you do not have one the Law Society will be able to advise you as to the identity of specialist mental health lawyers in your geographical area.
- There may be carer's advocacy and support services at the hospital where your relative is detained.
- You may wish to seek guidance and advice from specialist mental health charities and organizations such as MIND or Rethink.
- Application forms for the tribunal can be found at www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/mental-health/index.htm or obtained from the Customer Service Team at:

HM Courts & Tribunals Service
First-tier Tribunal (Mental Health)
PO Box 8793
5th Floor
Leicester LE1 8BN

Telephone: 0300 123 2201

or

Email: mhrtenquiries@hmcts.gsi.gov.uk